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Evan Gerald Miler

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON – PORTLAND DIVISION

CASE NO. 3:19-cv-01764

Evan Gerald Miler,

Plaintiff,

v.

BANK OF AMERICA, N.A.,

Defendants.

PLAINTIFF’S COMPLAINT FOR DAMAGES:

1. Violation of the Telephone Consumer Protection Act

COMES NOW Plaintiff Evan Gerald Miler (“Plaintiff” or “Miler), an individual, based on information and belief, to allege as follows:

INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant’s violation of the Telephone Consumer Protection Act 47 U.S.C. §227, *et seq.* (hereinafter “TCPA”), which prohibits the use of automated dialing equipment when making calls to consumers.

2. Plaintiff brings this action against Defendant Bank of America, N.A. (hereinafter “BANA”) for its abusive and outrageous conduct in connection with debt collection activity.

3. While many violations are described below with specificity, this Complaint alleges violations of the statutes cited in their entirety.

4. The TCPA was designed to prevent calls like the ones described herein, and to protect the privacy of citizens like Plaintiff, and by enacting the TCPA, Congress intended to give consumers a choice as to how corporate entities may contact them and to prevent the

1 nuisance associated with automated or prerecorded calls.

2 **JURISDICTION & VENUE**

3 5. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1367, and 47
4 U.S.C. § 227.

5 6. This venue is proper pursuant to 28 U.S.C. §1391(b).

6 **GENERAL ALLEGATIONS**

7 7. Plaintiff Evan Gerald Miler is an individual residing in the state of Oregon and is
8 a “debtor.”

9 8. At all relevant times herein, Defendant BANA engaged via mail, email, and
10 telephone, in the business of collecting a debt from Plaintiff, and a “consumer debt.”

11 9. At all relevant times, Defendant acted as a “debt collector.”

12 10. Plaintiff had taken out his first unsecured loan with BANA in approximately
13 2015, and a subsequent unsecured loan in approximately 2017.

14 11. The loans Plaintiff took from Defendant BANA were extended primarily for
15 personal, family or household purposes and is therefore a “debt.”

16 12. Defendant BANA has been attempting to collect on a debt that originated from
17 monetary credit that was extended primarily for personal, family, or household purposes, and
18 was therefore a “consumer credit transaction.”

19 13. Because Plaintiff, a natural person allegedly obligated to pay money to Defendant
20 BANA arising from what Plaintiff is informed and believes was a consumer credit transaction,
21 the money allegedly owed was a “consumer debt.”

22 14. Plaintiff is informed and believes that Defendant is one who regularly collects or
23 attempts to collect debts on behalf of itself and is therefore a “debt collector.”

24 15. Plaintiff’s account was an unsecured loan and Plaintiff began making payments
25 on the accounts.

26 16. Plaintiff began making payments on the loan before he became financially unable
27 to keep up with the monthly payments.

17. Defendant BANA began contacting Plaintiff in or about June of 2019 to inquire
about the status of the loans and to collect on the payments that were no longer being made.

18. Plaintiff retained counsel to assist in dealing with the BANA debt and to seek
some type of financial relief.

1 19. Counsel for Plaintiff sent a letter of revocation to BANA on or about June 25,
2 2019.

3 20. Plaintiff believes his revocation and representation letter was received by BANA
4 on June 28, 2019.

5 21. Plaintiff informed BANA, through his letter of revocation, that he was revoking
6 his consent, if it was previously given, to be called on his telephone.

7 22. Plaintiff was frustrated that BANA continued to make unsolicited calls to his
8 cellular telephone after contacting BANA to revoke his consent.

9 23. Plaintiff denies that he ever gave his express consent to be contacted on his
10 cellular telephone by automatic dialing machines and pre-recorded messages.

11 24. Defendant BANA continued to contact Plaintiff between approximately June 25,
12 2019 – September 11, 2019; the type of contact was through phone calls to Plaintiff on his
13 cellular telephone.

14 25. Despite notice being sent, Defendant continued to contact Plaintiff on his cellular
15 telephone regarding collection of his outstanding debt.

16 26. BANA ignored Plaintiff's letter of representation and continued to contact him
17 for at least two (2) months following receipt of Plaintiff's letter.

18 27. Despite being aware of Plaintiff's June 25, 2019 revocation, BANA continued to
19 contact Plaintiff on his cellular telephone.

20 28. BANA's calls were frequent in nature and continued despite receiving written
21 confirmation that Plaintiff was revoking any consent that may have been previously given to be
22 called on his cellular telephone.

FIRST CAUSE OF ACTION

(Violation of the TCPA)

(47 USC § 227)

(Against Defendant and Does 1-100)

23 29. Plaintiff re-alleges and incorporates the allegations in each and every paragraph
24 above by reference as if fully stated herein.

25 30. Since at least June of 2019, Defendant started calling Plaintiff's cellular telephone
26 requesting that payment be made on the accounts Plaintiff held with Defendant.

27 31. Plaintiff informed Defendant that he was revoking consent to be contacted by
BANA via telephone in June of 2019.

32. BANA continued to call Plaintiff frequently after Plaintiff withdrew his consent to be contacted by an automatic dialing machine.

33. Defendant would contact Plaintiff frequently regarding payment on the accounts.

34. Defendant placed the above cited calls using an artificial or prerecorded voice to deliver the collection messages without Plaintiff's prior express consent.

35. Defendant contacted Plaintiff on at least ninety-five (95) separate occasions after Plaintiff informed Defendant that he did not wish to be contacted on his cellular telephone and withdrew any prior consent that may have been given.

36. All calls placed by Defendant to Plaintiff utilized an "automatic telephone dialing system" as defined by 47 U.S.C. §227(a)(1).

37. These calls were made to Plaintiff's cellular telephone and were not calls for an emergency purpose as defined by 47 U.S.C. §227(b)(1)(A).

38. These telephone calls by Defendant, or its agent(s), violated 47 U.S.C. §227(b)(1)(A)(iii).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

- a. An award of statutory damages of \$1,500.00 pursuant to 47 U.S.C. §227(b)(3)(B) & (C) for each and every violation.
- b. Pursuant to 47 U.S.C. §227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- c. Pursuant to 15 U.S.C. 1692(k) both actual damages and statutory damages in an amount to be proven at trial.

Respectfully submitted,

**PERRY, SHIELDS, CAMPBELL,
FLOYD, PLLC**

Dated: November 2, 2019

/s/ Kyle Schumacher
Kyle Schumacher
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of this matter by jury.

**PERRY, SHIELDS, CAMPBELL,
FLOYD, PLLC**

Dated: November 2, 2019

/s/ Kyle Schumacher
Kyle Schumacher
Attorneys for Plaintiff